Supreme Court, U.S.
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No. 99-1039

In The

Supreme Court of the United States

JAMES J. SIBLEY, SR.,

Petitioner,

versus

RAYWOOD J. LEMAIRE, Sheriff;
HUBERT P. TRAHAN; FREDDIE NOLAN,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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QUESTION PRESENTED FOR REVIEW

Whether petitioner was denied his right to trial by jury when a new trial was granted by the District Court and the case was later dismissed on a motion for summary judgment?

LIST OF PARTIES

The petition accurately sets forth the identity of the parties.

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JURISDICTION

Rule 10 of the Rules of the Supreme Court of the United States provides that this Court may grant a petition for certiorari only for compelling reasons. According to Rule 10, compelling reasons can be found, among other things, if the decision leading to the petition: contributes to a conflict of authority between the court of appeal and/or state courts of last resort; reflects a departure from the usual course of judicial proceedings; or presents an important question of federal law that has not been but should be settled by this court.

Petitioner has not set forth an adequate basis to justify the exercise of this court's discretionary jurisdiction. This case comes to this court following a jury verdict in petitioner's favor, the grant of a new trial, and the grant of a motion for summary judgment dismissing petitioner's 42 U.S.C. § 1983 claim. Thereafter the grant of new trial and summary judgment were affirmed in the Court of Appeals. Petitioner does not complain of error in the affirmance of either the new trial or summary judgment. The petition is based wholly on a mischaracterization of the ruling of the Court of Appeals and the effect that the mischaracterized ruling would have on a new trial.

Adequate grounds do not exist which would justify the exercise of this court's discretionary jurisdiction.

STATEMENT OF THE CASE

Petitioner's statement of the case includes incomplete and inaccurate statements of fact. Respondents offer the following statement of the case.

A. Course of proceedings and disposition in courts below

Petitioner, James Sibley, initially pursued recovery from various defendants, along two separate tracks. First, petitioner proceeded in state court against the Vermilion Parish Police Jury, Dr. Ardley Hebert (the Vermilion Parish coroner), Sheriff Raywood Lemaire and Dr. Brian Amy under state law theories. Ultimately, all state court defendants, with the exception of Sheriff Lemaire, were dismissed either by settlement (Vermilion Parish Police Jury), by discharge in bankruptcy (Dr. Ardley Hebert), or by summary judgment (Dr. Brian Amy). Simultaneous with the filing of the state court proceedings, petitioner filed a complaint for damages against respondent, Sheriff Lemaire, in the United States District Court for the Western District of Louisiana, alleging a theory of recovery under 42 U.S.C. § 1983. The federal court action remained dormant, pending the outcome of various proceedings in state court. Ultimately, on February 29, 1996, petitioner filed a first amended complaint in U.S. District Court, merging the civil rights and negligence claims against Sheriff Lemaire and adding as additional defendants, respondents deputy Hubert Trahan and deputy Freddie Nolan.

The trial of the § 1983 claims essentially involved policy decisions regarding the use of the isolation cells

and shackles to restrain prisoners. Petitioner questioned the constitutionality of these policies as implemented regarding mentally ill prisoners. During the course of the trial, the district court relied extensively upon *Scott v. Moore,* 85 F.3d 230 (5th Cir. 1996), a case decided only three months prior to the trial. The district court conducted the trial following *Scott* and charged the jury accordingly. Also, significantly, when preparing the jury verdict concerning the negligence claim raised under state law, the district court refused to include any non-parties (Dr. Hebert and Dr. Amy) on the verdict, following *Cavalier v. Cain's Hydrostatic Testing, Inc.,* 657 So.2d 975 (La. 1995), over respondents' objection.

The jury returned a verdict in petitioner's favor and, ultimately, a judgment was entered on the verdict. Following the entry of judgment respondents filed post-trial motions, including a motion for new trial. During the pendency of these post-trial motions, two significant developments occurred. First, on May 9, 1997, the Louisiana Supreme Court overruled the *Cavalier* decision in *Keith v. USF&G, Co.,* 96-2075 (La. 5-9-97) 694 So.2d 180. The effect of the *Keith* decision was to invalidate the decision of the district court to exclude non-parties from the verdict. Second, on May 20, 1997, the United States Fifth Circuit Court of Appeals rendered an *en banc* decision in *Scott v. Moore,* 114 F.3d 51 (5th Cir. 1997), which undermined the basis for the opinion relied upon by the district court in conducting the trial and fashioning jury charges. Thus, the district court granted a new trial based upon the recent decisions in both *Keith* and *Scott.*

Following the grant of new trial, respondents filed a motion for summary judgment requesting dismissal of

the § 1983 claim and dismissal, without prejudice, of the state law negligence claim. The district court granted summary judgment dismissing the § 1983 claim, finding that there was no genuine issue of material fact that respondents were not aware that petitioner posed a substantial risk of self-mutilation. Additionally, the district court refused to exercise supplemental jurisdiction and dismissed, without prejudice, the state law negligence claim.

From the affirmance of the grant of new trial and summary judgment by the United States Fifth Circuit Court of Appeals, petitioner applied to this court for certiorari.

B. Statement of Facts

During the early evening hours of November 22, 1989, the Vermilion Parish Sheriff's Department was dispatched to the home of Horace Patin to investigate the report of a simple battery. After arrival on the scene, petitioner, James Sibley, was arrested for simple battery and aggravated assault with a baseball bat on Patin, petitioner's father-in-law. Because of petitioner's unusual behavior in the days preceding his arrest, petitioner's family members requested that he be evaluated by a physician.

Petitioner was booked into the Vermilion Parish Correctional Center and, on the following day, November 23, 1989, petitioner was seen by Dr. Ardley Hebert, the Vermilion Parish coroner. Dr. Hebert felt that petitioner needed psychiatric treatment and stated to jailers that he

would attempt to secure a bed at Acadiana Mental Health, a state run mental health facility. Unfortunately, no beds were available at Acadiana Mental health and Petitioner was placed on a waiting list for admission.

Petitioner was initially placed in a holding cell but was transferred to an isolation cell due to his unusual behavior; petitioner was disrobing and masturbating in the holding cell which was open to view by female jailers and other visitors to the correctional center. On November 24, 1989, nurse Lewis Touchet was advised by deputy Freddie Nolan that petitioner needed to be seen by a doctor. Touchet, an employee of the Vermilion Parish Policy Jury assigned to the medical staff of the Vermilion Parish Correctional Center, made an independent assessment of petitioner and recommended evaluation by Dr. Brian Amy, the assistant parish coroner.[1] Dr. Amy concurred with the initial evaluation made by Dr. Hebert and recommended transfer of petitioner to Acadiana Mental health for "bizarre behavior and inappropriate affect." Dr. Amy also contacted Acadiana Mental Health, and confirmed that petitioner was on a waiting list for admission and that no beds were then available. Dr. Amy executed a coroner's emergency certificate, committing petitioner to a mental health facility.

Medical services were available to petitioner pursuant to written policy employed by Sheriff Raywood

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[1] Under Louisiana law, both the coroner and the police jury are separate legal entities apart from the Sheriff. Petitioner does not claim that respondents are responsible for the conduct of these non-parties.

Lemaire. Under the Sheriff's policy, the medical department was headed by Dr. Hebert, who was responsible for all medical services and was the final authority on all medical judgments. If treatment could not be provided within the Vermilion Parish Correctional Center, the medical policy provided that an inmate would be transferred to University Medical Center (a state hospital) in Lafayette, Louisiana. Under Sheriff Lemaire's policy, the medical department was also staffed by nurse Touchet. Touchet made daily rounds, seven days a week, and was on call. Touchet dispensed medicine and acted as a liaison between the inmates and Dr. Hebert. Sheriff's deputies were not authorized to render medical treatment or exercise medical judgment. Inmates were transported only upon authorization by Dr. Hebert or his assistants.

Petitioner was placed in the isolation cell pursuant to Sheriff Lemaire's policy of segregated detention. Segregation routinely occurred during the first 72 hours after a new inmate was booked, while the inmate was awaiting bail. If bail was not made, the inmate was transferred to the general population. Petitioner was maintained in isolation after the 72 hour waiting period due to his consistently strange conduct. Lemaire maintained a policy that inmates in observation be observed every 15 minutes.

Throughout petitioner's incarceration, no medication was ordered, no consultation was recommended and no transfer to a private medical facility was requested by the medical staff; although any of the foregoing could have been ordered, at parish expense. Petitioner did not receive a mental examination within 72 hours after being committed under the coroner's emergency certificate, as required by Louisiana Revised Statute 28:53.

Throughout his incarceration, petitioner's behavior remained erratic. Petitioner was observed holding his bible upside down, apparently reading from it, cleaning the walls of his cell with toilet paper, and lying next to his toilet staring into it. On Sunday, November 26, 1989, at approximately 12:45 p.m., deputies were preparing for inmate visitation when a noise was heard coming from petitioner's cell. Petitioner was banging on his cell door attempting to get the attention of the jailers. Petitioner wanted the inmate occupying a neighboring cell to be moved because the inmate objected to petitioner's reading of the bible out loud. Petitioner was admonished not to make noise as he was disrupting visiting hours, but he refused and was thereafter shackled by one leg to his bed so that he could not reach the door.

On Monday, November 27, 1989, Acadiana Mental Health still could not accept petitioner for admission. At approximately 5:30 p.m., petitioner threw a tray of food around his cell and urinated on himself. The deputies removed petitioner from the cell, offered him a shower, cleaned the cell, and returned petitioner to isolation. A shift change occurred at 6:00 p.m. After the shift change deputies B.J. Peters and Rodney Lemoine were on duty. Deputy Lemoine observed petitioner at 9:15 p.m. sitting on his bed chanting. At 9:30 p.m. Lemoine observed petitioner gouging out his eyes with his fingers. Petitioner later related that his self-mutilation was in response to a command from God.

The uncontradicted evidence proved that petitioner suffered from a command auditory hallucination, that this condition was a product of petitioner's psychosis, and that the self-mutilation was highly unusual and

unpredictable, even for trained medical personnel. Indeed, there was no other evidence of self-harming behavior.

Except for petitioner's booking into the Vermilion Parish Correctional Center. Sheriff Lemaire was unaware of any of the circumstances surrounding petitioner's incarceration. Sheriff Lemaire's office was located in the main headquarters of the Vermilion Parish Sheriff's Department in Abbeville, Louisiana, separate from the Vermilion Parish Correctional Center. Chief deputy Hubert Trahan did maintain an office at the jail, but was not present at the time of petitioner's disturbance on Sunday, November 26, 1989 or at the time of petitioner's food throwing incident and self-mutilation on Monday, November 27, 1989. Although deputy Freddie Nolan participated in petitioner's shackling on Sunday, November 26, 1989, deputy Nolan went off duty at the end of his Sunday shift and did not work on the date of incident.

REASONS FOR DENYING THE WRIT

A. The petition mischaracterizes the ruling of the Fifth Circuit

At the heart of the ruling of the Court of Appeals was the following statement:

> "In light of our en banc decision [in *Scott v. Moore*], the district court therefore correctly concluded that, in this case, it was error to submit the amorphous question of whether the prison's policy was reasonably related to a legitimate government objective to a jury. Instead, the

> court first had to determine that, based on the record before it, a specific employee had acted with deliberate indifference to Sibley's medical condition. We therefore find no error in the district court's conclusion that this error required a new trial on the § 1983 claim."

Petitioner concludes from a reading of the above statement that, in civil rights cases, the Fifth Circuit has now taken from jury consideration the issue of subjective deliberate indifference. The petition represents a very imaginative reading of the Fifth Circuit opinion which did not take this issue from the jury.

The Fifth Circuit merely reiterated the analysis to be applied in this type of case, in light of the *en banc* opinion in *Scott v. Moore*. The Fifth Circuit recognized, as did the District Court, the error in submitting the civil rights issue to the jury under a "legitimate governmental objective" standard. In this episodic act case, the Fifth Circuit ruled that the appropriate analysis of liability for an individual official is under subjective deliberate indifference, while superiors may be held liable only if it is shown that the act of the state official resulted from a policy maintained with objective deliberate indifference.

> "The district court expressed considerable skepticism about whether Sibley's theory amounted to a constitutional violation. However, holding that it was bound by a recent Fifth Circuit opinion, *Scott v. Moore*, 85 F.3d 235 (5th Cir. 1996), the district court concluded that the question of whether a prison policy was reasonably related to a legitimate government objective was a factual question for the jury to decide.

> After the district court entered judgment, we issued our en banc opinion in *Scott v. Moore*, 114 F.3d 51 (5th Cir. 1997). In that opinion, we made it clear that in a case such as Sibley's, the appropriate analysis was not whether the conditions of confinement were responsible for Sibley's injuries. Rather, his case should be examined as an 'episodic act or omission' case:
>
> > In an 'episodic act or omission' case, an actor usually is interposed between the detainee and the municipality, such that the detainee complains first of a particular act of, or omission by, the actor and then points derivatively to a policy, custom, or rule (or lack thereof) of the municipality that permitted or caused the act or omission.
>
> Id. at 53. With respect to an 'episodic act or omission' case, we had previously established that the plaintiff must show that an official acted with subjective deliberate indifference. To hold superiors liable, the plaintiff must then show that the employee's act resulted from a municipal policy or custom adopted or maintained with objective deliberate indifference to the detainee's constitutional rights." Id. at 54 (quoting *Hare v. City of Corinth*, 74 F.3d 633, 649 n.4 (5th Cir. 1996))."

Therefore, the Fifth Circuit did not remove from jury consideration the issue of subjective deliberate indifference, but only recognized the proper analysis of this type of § 1983 claim.

B. Petitioner does not contest in this court the affirmance of either the grant of new trial or grant of summary judgment

The petition seems to "certify" a question that is not actually before this court. In the absence of any challenge to the grant of a new trial, petitioner's concern regarding the effect of the Fifth Circuit ruling is not reviewable. Furthermore, in the absence of any challenge to the grant of summary judgment, dismissing the § 1983 claim, petitioner's concern regarding the effect of the Fifth Circuit ruling will never become reviewable; the issue is moot.

Petitioner's failure to contest the affirmance of the grant of new trial effectively admits that the grant of new trial was correct. Indeed, petitioner does not contest that the trial was conducted and that the jury was charged under the wrong standard. The *en banc* decision in *Scott* settled the standard to be applied in this type of claim.

> "We noted that determining which standard to apply in analyzing constitutional challenges by pretrial detainees hinges upon the classification of a challenge as an attack on a 'condition of confinement.' 74 F.3d at 644. A 'condition of confinement' case is a '[c]onstitutional attack[] on general conditions, practices, rules, or restrictions of pretrial confinement.' Id.
>
> *Hence,* where a detainee complains of the number of bunks in a cell or his television or mail privileges, the wrong of which the detainee complains is a general condition of confinement. In such cases, the reasonable relationship test of *Bell v. Wolfish,* 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), is apposite, as we may safely

> assume, by the municipality's very promulgation and maintenance of the complained-of condition, that it intended to cause the alleged constitutional deprivation. See *Hare*, 74 F.3d at 645 ('Only with such intentionality as a given is the [*Wolfish*] test useful.'). Under *Wolfish*, 441 U.S. at 539, 99 S.Ct. at 1874, a constitutional violation exists only if we then find that the condition of confinement is not reasonably related to a legitimate, nonpunitive governmental objective. See *Hare*, 74 F.3d at 640.
>
> In contrast, where the complained-of harm is a particular act or omission of one or more officials, the action is characterized properly as an 'episodic act or omission' case and is not amenable to review under the *Wolfish* test. See *Hare*, 74 F.3d at 645. In an 'episodic act or omission' case, an actor usually is interposed between the detainee and the municipality, such that the detainee complains first of a particular act of, or omission by, the actor and then points derivatively to a policy, custom, or rule (or lack thereof) of the municipality that permitted or caused the act or omission."

Scott, supra, at p. 53.

Hence, the submission of the § 1983 claim to the jury under the "legitimate governmental objective" standard was in error and required the grant of a new trial. The decision to grant or deny a motion for new trial is generally within the sound discretion of the trial court, and is reversible only for an abuse of discretion. *Shows v. Jamison Bedding, Inc.*, 671 F.2d 927 (5th Cir. 1982). The trial judge is in the best position to determine whether the alleged error affected the substantial rights of any party sufficient

to warrant a new trial. *O'Dell v. Hercules, Inc.*, 904 F.2d 1194 (8th Cir. 1990).

A new trial may be granted on evidentiary grounds, when the verdict is against the great weight of the evidence. *Shows, supra,* at p. 930. A verdict can be against the great weight of the evidence and thus justify a new trial, even if there is substantial evidence to support it. Id. In passing on a motion for new trial the trial court may weigh all the evidence and evaluate credibility, and need not view the evidence in the light most favorable to the non-moving party. *Smith v. Trans World Drilling Co.*, 773 F.2d 610 (5th Cir. 1985), at p. 613. The evidence supported the grant of a new trial, and petitioner does not contest the grant of a new trial.

As stated above, petitioner did not claim damages for excessive shackling or for mental anguish, resulting from the delay in receiving medical treatment. Petitioner claimed damages solely based upon his self-mutilation and resulting blindness. Therefore, the issue which should have been presented to and determined by the jury was whether respondents acted with subjective deliberate indifference to the risk of petitioner's self-mutilation. In *Hare v. City of Corinth*, 74 F.3d 633 (5th Cir. 1996) an *en banc* panel of Fifth Circuit Court of Appeals held in this type of constitutional claim:

> "Our opinion in this case makes clear that to prove an underlying constitutional violation in an individual or episodic acts case, a pretrial detainee must establish that an official acted with *subjective* deliberate indifference."

Id., at p. 649, n.4. The great weight of the evidence indicated that respondents could never have responded to the risk of petitioner's self-mutilation with subjective deliberate indifference, considering that petitioner's self-mutilation was the result of his psychosis and completely unpredictable. The foregoing further supports the grant of new trial and was the basis for the grant of summary judgment.

Therefore, the record of this case clearly shows that the opinion of the United States Fifth Circuit Court of Appeals, affirming the grant of new trial and the grant of summary judgment, is not at issue before this court. The record of this case further shows that the grant of new trial and the grant of summary judgment were warranted and appropriate. The only complaint with the opinion of the Fifth Circuit made by the petitioner concerns an instruction by the Fifth Circuit concerning conduct of the new trial; an instruction which was never implemented. Petitioner completely mischaracterized the ruling of the Fifth Circuit.

The petition for writ of certiorari should therefore be denied.

CONCLUSION

The petitioner presented a single question for review by this court: whether he was denied a jury determination of the respondents' alleged deliberate indifference to his constitutional rights. However, this question is moot. A new trial was granted by the district court and affirmed by the Fifth Circuit. The grant of the new trial is

not contested by petitioner. The § 1983 claim is now dismissed since summary judgment was granted by the district court and affirmed by the Fifth Circuit. The grant of summary judgment, likewise, is not contested by petitioner. Any objectionable language in the Fifth Circuit opinion identified by petitioner merely represents an instruction concerning the conduct of a new trial; an instruction which was never implemented. This case does not merit further review by this court.

For the foregoing reasons the petition for writ of certiorari filed on behalf of James J. Sibley, Sr. should be denied.

Respectfully submitted,

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